

## The complaint

Mrs H complains that Tesco Personal Finance PLC trading as Tesco irresponsibly lent to her.

## What happened

The circumstances of the complaint are familiar to both sides, so I don't intend to set it all out in detail here. Instead, I'll provide a summary.

Mrs H took out a credit card with Tesco in December 1999. As far as I can see from the available information, the initial credit limit is unknown<sup>1</sup>. The credit limit was later increased seven times as follows:

Date	New Credit Limit
16 October 2000	Unknown
6 July 2001	Unknown
4 January 2002	Unknown
26 April 2002	Unknown
4 October 2002	£6,000
7 October 2003	£8,600
6 April 2004	£10,000

In July 2006 Mrs H entered into a debt management plan – this credit card was included in the plan. The outstanding debt was sold to a third-party in July 2016.

In September 2023 Mrs H complained to Tesco about its decision to provide her the initial credit, as well as the subsequent limit increases, which she said were unaffordable.

In response to the complaint, Tesco said it had been made too late. It said that Mrs H has raised the complaint outside of the rules set out in the Financial Conduct Authority's handbook, known as the DISP rules – specifically DISP 2.8.2.

Unhappy with this, Mrs H referred her complaint to our service in October 2023. One of our investigators looked into matters and, in December 2023, issued their view on our jurisdiction in this matter. The investigator said that he felt our service could consider the merits of Mrs H's complaint in full because he didn't think more than three years had lapsed from when Mrs H knew – or ought reasonably to have known – she had cause for complaint. Tesco didn't agree, so the matter was passed to an ombudsman to decide. In March 2024, the ombudsman issued a decision in which he said that our service had jurisdiction to consider the merits Mrs H's complaint in full, for much the same reasons as our investigator.

As a result, the complaint was passed back to our investigator to consider the merits of the complaint. In December 2024, our investigator issued his first set of findings with regards to the merits of the complaint. In short, he said that he didn't think Tesco had acted fairly by

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<sup>1</sup> Even if this is not the case, it has no bearing on the outcome I have reached for the reasons I'll explain.

increasing Mrs H's credit limit on 6 April 2004. So, he recommended that the complaint be upheld from this date.

Mrs H didn't agree with our investigator and, in doing so, provided some more information. In February 2024, our investigator issued his second set of findings in which he still upheld the complaint, but did so from an earlier date. Specifically, our investigator said that Tesco had acted unfairly by increasing Mrs H's credit limit on 7 October 2003 and, therefore, he recommended that the complaint be upheld from this date.

Tesco didn't agree. In doing so, it said that neither it nor Mrs H had provided financial data to cover the lending decisions, and it felt our investigator had applied regulatory standards which were not relevant to the time of the lending decisions. What's more, it noted that Mrs H regularly paid *significantly more than the minimum payment due each month*.

As an agreement couldn't be reached, the complaint has been passed to me to review afresh.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I'm minded to reach the same conclusion as our investigator and for the same reasons. This being that the complaint should be upheld in part. I'll explain why I think this is a fair and reasonable answer given the circumstances of this complaint.

When considering this complaint, I'm required to take into account relevant rules, regulations, law, guidance and codes of practice as well as what I consider to have been good industry practice at the time. As the lending was taken out between 1999 and 2004, I've had in mind various rules and guidance and good industry practice from the relevant time, including (but not limited to) the Banking Code. The Banking Code set out best practice for financial firms to follow when lending to its customers. It is a voluntary code and lenders weren't required to follow this, but I understand Tesco subscribed to the Code<sup>2</sup>.

The Banking Code set out best practice for financial firms to follow when lending to its customers. The Code set out that before granting credit (including increasing a credit card limit), lenders should assess whether they feel the consumer can repay that borrowing. To do this it said lenders should take into account one or more of the following (but not necessarily limited to): the consumer's income and financial commitments, how they handled finances in the past, information from credit reference agencies, information the consumer provided and credit scoring.

So, in making my decision, I've considered whether Tesco carried out a reasonable assessment each time it offered Mrs H credit to check she would be able to repay it. I've also considered what Tesco found out through its assessments, and whether it treated Mrs H with reasonable care and with regard to her interests when it decided to offer her credit.

Tesco has been unable to provide much information about the checks that were completed at the time of account opening – or at the time of the subsequent credit limit increases. Bearing in mind the length of time that has passed, it isn't surprising or unusual that it doesn't have such information. And to be clear, I don't draw a negative inference from this. I wouldn't have expected Tesco to provide such information dating back more than 20 years.

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<sup>2</sup> Even if this were not the case, I think that it represents a reasonable starting point when considering what would have been good industry practice at the relevant time.

However, Tesco does hold some information that Mrs H gave it during the application back in December 1999. This suggests that Mrs H was employed full-time and she was earning £15,642 a year.

Because the information Tesco has from the time is, understandably, very limited, we asked Mrs H if she had any information available, such as a credit report or bank statements, that might provide some understanding of her financial position at the time Tesco agreed to lend.

Mrs H has told us her income was £1,150 between 2000-2003<sup>3</sup> and £1,830 between 2004-2005. Mrs H has also been able to provide a copy of a credit report that is dated October 2004.

Having spent time reviewing the contents of this report, it would be difficult to dispute that Mrs H had a significant amount of debt at the time of the report, relative to what is known about her income. I say this because it looks like Mrs H had in excess of £50,000 in existing unsecured debt spread across 18 different credit facilities. I think this would have given a lender sufficient cause for concern that Mrs H was overindebted and, therefore, would be unable to repay any further borrowing sustainably – such that it should not agree to lend further.

But, as I say, this provides a picture of Mrs H's income in October 2004. The lending decisions Mrs H complains about began in 1999. I've thought carefully about this. Having done so, I don't think it would be reasonable for me to rely on a credit report from October 2004 to draw conclusions about what Mrs H's financial situation was for the initial lending decision in December 1999, as well as the subsequent limit increases on 16 October 2000, 6 July 2001, 4 January 2002, 26 April 2002 and 4 October 2002 – the latter being some two years prior to the date of the report.

I say this because, whilst I accept that there were several active accounts, the report doesn't provide enough information to be able to determine what balances were outstanding on the accounts, what the credit limits were on those accounts or how the accounts were managed.

In the absence of information about the checks Tesco carried out – as well the absence of information to draw reasonable conclusions about Mrs H's financial circumstances at the time of these lending decisions - I'm unable to say whether Tesco should have been aware of her financial position or whether that would have affected its decision to lend to her and/or increase the credit limit.

So, in respect of the issuing of the credit card in December 1999 and the five subsequent limit increases between 16 October 2000 and 4 October 2002, I don't think there is sufficient evidence for me to make a finding that Tesco acted irresponsibly.

However, I do think the credit report can be used to draw reasonable conclusions about Mrs H's financial situation at the time of the credit limit increase in October 2003 – this being just 12 months earlier.

On balance, it seems unlikely Miss H's financial situation – and specifically the extent to which she was overindebted – would have been markedly different between October 2003 and October 2004. And, if it was different, I don't think it would have been to such an extent that further borrowing would have been affordable in October 2003.

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<sup>3</sup> This broadly tallies with the information Mrs H provided on her initial application in December 1999.

I am persuaded that Mrs H's financial position likely got worse over time, which is why I don't think it was unreasonable of the investigator to find it more likely than not that the credit limit increase that happened in October 2003 – and by extension the credit limit increase in April 2004 - was likely to have been unaffordable for Mrs H.

### Summary

Based on everything I've seen, I'm satisfied that Mrs H's complaint should be upheld in part. I'm persuaded that for the credit limit increases applied to the account in October 2003 and April 2004 were unaffordable for Mrs H. And, therefore, Tesco didn't make fair lending decisions in respect of these credit limit increases.

However, I haven't seen sufficient evidence for me to make a finding that Tesco acted unfairly with regards to the initial lending decision, as well as the credit limit increases on 16 October 2000, 6 July 2001, 4 January 2002, 26 April 2002 and 4 October 2002.

In reaching this conclusion, I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Mrs H in the circumstances of her complaint with respect to the credit limit increases in October 2003 and April 2004. For the reasons I've explained, I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case in respect of those limit increases.

And I haven't seen anything to suggest that s.140A or any else would, given the facts of this complaint, lead to a different outcome with respect to the initial lending decision, as well as the credit limit increases on 16 October 2000, 6 July 2001, 4 January 2002, 26 April 2002 and 4 October 2002.

### **Putting things right**

Tesco should put things right for Mrs H by:

- Reworking the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £6,000 after the date of the credit limit increase on 7 October 2003.
- If the rework results in a credit balance, this should be refunded to Mrs H along with 8% simple interest per year\* calculated from the date of each overpayment to the date of settlement. Tesco should also remove all adverse information recorded after 7 October 2003 regarding this account from Mrs H's credit file.
- Or, if after the rework there is still an outstanding balance, Tesco should liaise with the debt purchaser to ensure that any adverse information recorded after 7 October 2003 in relation to the account is removed from her credit file once the balance has been repaid.

\*HM Revenue & Customs requires Tesco to deduct tax from any award of interest. It must give Mrs H a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax

### **My final decision**

My final decision is that I uphold this complaint in part. And I direct Tesco to settle Mrs H's complaint in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or

reject my decision before 19 June 2025.

Ross Phillips  
**Ombudsman**